to saying in most cases that there is to be no remedy whatever.

He also says that the Connecticut decree might be overhauled in the same manner; which is true when properly understood, *i. e.* it might be, *if obtained by a like fraud.*[1]

D.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania, at Nisi Prius, December, 1854.[2]

WILLIAM THOMAS *vs.* JAMES CROSSIN, ET AL.

1. The 7th section of the Act of Congress, of 2d March, 1833, commonly called "The Force Bill," which authorizes the writ of *habeas corpus* to be issued by the courts of the United States, under certain circumstances, for the protection of officers, and others acting with them, in execution of the laws of the United States, is to be confined in its application to cases, where there has been an avowed purpose, by some authority or law *of a state*, to disregard an act of Congress, and to imprison or otherwise punish the officers of the United States for enforcing it; and operates, moreover, only in cases where such purpose appears on *the face of the proceedings.* Where a *habeas corpus* has been issued in pursuance of the statute, by a United States Court, it has no right to go behind the return to the writ; and if it does, and discharges the relator, upon evidence taken at the hearing, such discharge is inoperative, and will be disregarded by a state court.
2. The marshal and deputy marshals of the C. C. for the Eastern District of Pennsylvania, were arrested under a *capias*, in a civil action of assault and battery, for abuse of power, brought in the Supreme Court of Pennsylvania. They took out a *habeas corpus* to the Circuit Court. On the hearing, evidence as to the real cause of action in the suit was entered into, and the relators discharged. The sheriff returned these facts to the *capias.* An attachment was applied for by the plaintiff against the sheriff, for not bringing in the bodies of the defendants. The court held that the discharge by the United States Court was invalid, but refused the attachment under the circumstances, the plaintiff having unneccesarily delayed his application. It was decided, however, that the defendants might be considered as discharged on common bail, and that the plaintiff might proceed regularly in his action.

[1] Since the above article was written, the Court of Appeals of the State of New York have *affirmed* the judgment of the Superior Court in *Dobson* vs. *Pearce* (December Term, 1854,) upon Dobson's Appeal. D.

[2] Before LEWIS, C. J., and WOODWARD, J.

This was an action of trespass, *vi et armis*, against Wynkoop, marshal, and Crossin, Jenkins and Keith, deputy marshals of the United States, for the Eastern District of Pennsylvania.

In order to the proper understanding of the case, which has been before the courts in several shapes before, it is necessary to state, briefly, the circumstances out of which it arose, and the nature of the previous proceedings.

In the fall of 1853, a warrant, under the Act of 1850, issued out of the Circuit Court of the United States for the Eastern District of Pennsylvania, for the arrest of a negro by the name of Bill Thomas, as a fugitive slave, which was placed in the hands of the marshal and deputy marshals, the defendants above named. An attempt was made by them to seize Thomas, in the town of Wilkesbarre. He resisted, and a violent contest ensued, in which, though very severely injured, he succeeded in escaping. It has been alleged that the officers behaved with great and unnecessary brutality on the occasion; but this has been denied, and the truth of the charge is not at present material. It is sufficient to state, that the affray caused much excitement in the neighborhood, and that a third person believing the officers to have abused their authority, applied for and obtained a warrant for their arrest, on a charge of assault and battery with intent to kill, under which they were arrested. The negro had by that time fled from the state. A *habeas corpus* was immediately taken out from the Circuit Court by the officers. On the hearing, Mr. Justice Grier admitted evidence of the real state of facts, and discharged the relators, under the Act of Congress of March 2, 1833, called the Force Bill.[1]

[1] This case will be found reported under the name of *ex parte* Jenkins, in 2 American Law Register, 144, and in 2 Wallace, Jr. Rep., 521. The charge was persisted in by the prosecutor, notwithstanding this discharge, and an indictment subsequently found against the defendants by the Grand Jury of Luzerne County, for riot and assault and battery with intent to kill. A bench warrant of outlawry was then issued by the Quarter Sessions, to the sheriff of Philadelphia County, under which the officers were again arrested. Another *habeas corpus* was issued out of the Circuit Court of the United States, and they were then discharged once more. 2 Wall. Jr. 539.

The present action was then brought by Thomas, or by his friends, in his name, against the officers, in the Supreme Court of the State. Two affidavits to hold to bail were filed, not by the plaintiff, but by other persons. According to the statement in Mr. Wallace's report,[1] these affidavits "showed that on the day of the arrest of Thomas, he came out of a hotel in Wilkesbarre, wounded, bleeding, and faint—that he was pursued—that there was a cry of 'shoot him,' and the sound of pistol shots—that he made his way to the river, and plunged in, declaring that he 'never would be taken'—that he subsequently came out, but was driven back again, at the water's edge, by a presented pistol—that there were many persons on the river bank, some of whom were menacing, and some who are spoken of (in the affidavits) as the 'pursuers,' and 'the officers'—that among the persons on the bank were three, of whom one witness says he 'saw two in the court-room, one was Wynkoop, and the other a big man' he thinks 'was Crossin,'—and that soon after the return of the officers to the hotel, the fugitive having escaped in the meantime, a colloquy of an excited character took place between two gentlemen at the hotel, in which one of them announced himself as Judge Collins, and the other as 'John Jenkins, U. S. Deputy Marshal.' Nothing, however, was said about *Keith*, the fourth party now arrested." On these affidavits a capias was allowed by a Judge of the Supreme Court, with bail in the sum of $3,000. The defendants were arrested, and not giving bail, were committed to prison. A habeas corpus was again sued out by them, from the Circuit Court of the United States, and heard before his honor, Judge Kane, the District Judge. Under the decision of Mr. Justice Grier, in the previous case, and on the ground of the uncertainty and insufficiency of the affidavits, the learned judge discharged the relators. The Sheriff returned these facts to the writ of capias.

After the lapse of about nine months, a motion was now made in the Supreme Court of Pennsylvania, at Nisi Prius, for an attachment against the sheriff of Philadelphia County, on the ground of an insufficient return, and for a failure to bring in the bodies of the

[1] 2 Wallace, Jr., 531.

defendants. The question was argued before their honors, Chief Justice Lewis and Judge Woodward.

The opinion of the Court was delivered by

LEWIS, C. J.—On the 31st of January, 1854, a capias issued out of this Court, in an action of trespass *vi et armis* for assault and battery, in which bail was ordered by Mr. Justice Woodward, in the sum of $5,000. The writ was returnable on the first Monday in February, 1854. The defendants named in the writ were arrested by the sheriff, and on the 6th day of February, 1854, that officer was served with a writ of habeas corpus, purporting to have issued out of the Circuit Court of the United States, commanding him to bring the bodies of the prisoners, together with the cause of detainer, before "the honorable John K. Kane, one of the judges of the said Circuit Court." On the 14th February, 1854, the said Circuit Court of the United States, having the bodies of the prisoners before it, together with the cause of detainer, duly certified, (to wit, the writ of capias issued out of the Supreme Court of Pennsylvania,) proceeded to hear evidence, and after said hearing, decided that the said prisoners were "under confinement and restrained of their liberty by authority of Samuel Allen, high sheriff of the County of Philadelphia, for acts done by them in pursuance of a law of the United States and of process issuing from a judge thereof;" and thereupon the Circuit Court of the United States ordered the prisoners to be discharged from confinement. The sheriff obeyed this order, and made return of the facts to this Court. On the 14th November, 1854, nine months after the prisoners were discharged, the plaintiff obtained the present rule on the sheriff to show cause why an attachment should not issue against him for want of a sufficient return to the original writ.

Was the sheriff bound to obey the order made by the Circuit Court of the United States? The answer to this question depends upon another: Had the Circuit Court jurisdiction over the parties and the question in the manner in which it was exercised? In considering a question of this kind, it should not be forgotten that the States of this Union are separate, free and independent sovereign-

ties, in all particulars, except those over which they have voluntarily given the control to the government of the United States; that the States are, in general, unlimited in their authority, while the United States government is one of *limited* and *enumerated* powers, and is strictly confined to the exercise of the powers thus enumerated. This fundamental principle of the Union is distinctly stated in the Federal Constitution itself. After enumerating the powers granted to the United States, the Constitution proceeds to declare that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." It is upon this principle of State sovereignty that each State has an undoubted right to regulate its own domestic institutions according to its own wisdom, and that neither its sister States, nor the Congress of the United States, have any right to interfere with such regulation.

The Constitution of the United States went into operation in March, 1789. In September following, the first Congress under it passed the "act to establish the Judicial Courts of the United States." In that act the section which gave the Federal Courts power to issue writs of habeas corpus, contained a *proviso* that those writs "shall in no case extend to prisoners in jail, unless where they are in custody, *under or by color of authority of the United States*, or are committed *for trial before some Court of the same*, or are necessary to be brought into Court to testify." This act was in conformity to the principles of the Union, and was passed when the discussions on the distribution of powers were fresh in the public recollection, and the subject was well understood by all. There was a manifest determination to guard the rights of the States, and to prohibit the Judges of the Federal tribunals from coming into collision with the State Courts, by any attempt to discharge prisoners who were held in custody under State process and State laws. In accordance with this principle, it was decided in Cabrera's case that the Circuit Court of the United States could not on habeas corpus discharge even a foreign Secretary of Legation from State process. 1 W. C. C. 232. And in *Dorr's case*, in 1845, it was held by the Supreme Court of the United States, that no

Court or Judge of the United States "can issue a habeas corpus to bring up a prisoner who is in custody under sentence or execution of a State Court, for any other purpose than to be a witness," and that "it is immaterial whether the imprisonment be under civil or criminal process," and that even "an individual who may be indicted in a Circuit Court of the United States, for treason against the United States, is beyond the power of the Federal Courts and Judges, *if he be in custody under the authority of a State.*" Ex-parte *Dorr*, 3 Howard, 105.

But the act of 2d March, 1853, sec. 7, gives the United States Judges powers somewhat more extensive than those previously exercised. By that section "either of the justices of the Supreme Court, or a judge of any District Court of the United States, shall have power to grant writs of *habeas corpus* in all cases of a prisoner or prisoners in jail or confinement, on or by any authority or law, *for any act done or omitted to be done, in pursuance of a law of the United States, or any order, process or decree of any judge or court thereof.*" Now it is exceedingly clear that there is a great difference between imprisonment *for an act done in obedience to the authority of the United States*, and being held to bail in an action of trespass *for an assault and battery committed without such authority.* The defendants in this action were in the latter predicament; there was nothing in the nature of the action, nor in the form of the writ, nor in the affidavits presented to the judge who fixed the amount of bail, which contained the slightest indication that they were sued for "any act done, or omitted to be done, in pursuance of any law of the United States, or any order, process or decree of any judge or court thereof." No State law had been passed authorizing such imprisonment. No judicial action had taken place in any manner countenancing such opposition to the authority of the United States. On the contrary, a large majority of the people of this State, and all the departments of the State government, stood in the most perfect fealty to the Constitution and laws of the United States. Neither at the time the act of 1833 was passed, nor at the time of the recent action of the United States Circuit Court, under its supposed authority, was there any reason

to believe that any officer of the United States Government, or other person, would or could be imprisoned by authority of this State for acts done under the authority of the United States. So far from this being the case, the State authorities constantly recognized all the constitutional powers of the United States; and the law of the United States would have been recognized in the State judiciary as a justification for any act done in pursuance of them, as fully as any Court of the United States had a right to recognize them. Under these circumstances, has the act of Congress of 1833 any application to the present case? The words of the act do not embrace it. They are confined to imprisonment for acts done or committed *under the authority of the United States*. The action and imprisonment in this case was for an *assault and battery without authority of any law whatever*. But it is conceded that a statute must be expounded, not according to its *letter*, but according to its *meaning*, and that even a thing which is within the *letter* of a statute is not within the statute unless it be within the *intention* of the makers, 11 Rep. 73; Bac. Ab. tit. Statute 1; Dwarris on Statutes, 690, 691, 692. It is an established rule of construction, that "the intention of the law-maker and the meaning of the law are to be discovered and deduced from a view of the *whole and every part of a statute taken and compared together*. It is the most natural and genuine exposition of a statute, to construe one part by any other part of the same statute; for that best expresses the meaning of the maker, and such construction is *ex viceribus actus*." 1 Inst. 381; Dwarris, 698. "The words and meaning of one part of a statute frequently lead to the sense of another, and in the construction of one part of a statute every other part ought to be taken into consideration." Stowel *vs.* Zouch, Plowden, 365; 2 Inst. 310; Dwarris, 698. It is also a rule equally well established, that the "old law and the mischief," or, what is the same thing, "the occasion and the reason of the enactment," are to be considered in ascertaining its meaning. Dwarris 702. With these rules before us, let us examine the several provisions of the act of Congress of 2d March, 1833, and let us look also into "the occasion and the reason of the enactment."

It is well known that the people of the United States have been divided in opinion in regard to the power of Congress to lay duties and imposts on foreign importations for the protection of domestic manufactures. The power to lay these duties for the purpose of raising revenue for the support of government was not doubted; but a large portion of the people denied the power to lay them "for the purpose of giving bounties to classes and individuals engaged in particular employments at the expense and to the injury and oppression of other classes and individuals." One of the Southern States, South Carolina, carried its opposition so far as to assemble in convention and to pass an ordinance, on the 24th of November, 1832, expressly declaring "the laws for imposing duties and imposts on the importation of foreign commodities, especially the acts of Congress of 19th May, 1828, and 14th July, 1832, to be null, void, and no law, nor binding upon the State, its officers and citizens." The ordinance further declared that "it shall not be lawful for any of the constituted authorities of the United States to enforce the payment of duties imposed by the said acts within the limits of the State," and made it the duty of the Legislature to "adopt such measures and pass such acts as may be necessary to give full effect to this ordinance, and to prevent the enforcement, and arrest the operation of the said acts of Congress within the said State." On the 20th December, 1832, the Legislature of South Carolina, in obedience to this direction, actually passed an act to carry into effect this ordinance of nullification. It authorized writs of *habeas corpus* to relieve from imprisonment, writs of replevin to retake property seized, and other actions to recover back money collected, and to recover damages for injuries incurred, *under the said acts of Congress imposing duties on foreign imports.* It declared all sales of property under judgments in the United States Courts, *for the said duties*, null and void, and prohibited the clerks of the State courts from furnishing copies of any judgment of a State court, *where the validity of the said acts of Congress was drawn in question*, to any person, for the purpose of reviewing the same in the United States Courts. It authorized the Sheriff to resist any attempt of the United States officers to recapture property

under pretence of the said acts of Congress, and punished by fine and imprisonment any United States officers, or others, who should disobey, obstruct or resist the process allowed by the nullification act, or should cloign, secrete, or wilfully remove any property seized for said duties, or do any other act to prevent the same from being replevied by the State process, or should, after the same had been replevied, recapture or seize, or attempt to recapture or seize the same, "*under pretence of securing the duties imposed by any of the several acts of Congress aforesaid, or for the non-payment of any such duties, or under any process, order or decree, or other pretext, contrary to the ordinance aforesaid.*" It prohibited the use of the public jails, or the letting to hire of any private building as a jail, for the purpose of imprisoning any one *under the said acts of Congress.*

Here was an open nullification of certain acts of Congress—an avowed intention to resist them—a denial of the right of appeal to the Supreme Court of the United States—and a determination to punish by fine and imprisonment any officer of the United States, or any person who aided him *in the performance of his duty under such acts of Congress.* The offence, as described in the statute of nullification, was *acting in obedience to the acts of Congress for the imposition of duties on foreign imports.* The warrant of arrest and the indictment would necessarily, in all cases, describe the offence as it was described in the statute creating it, and would, therefore, *show upon their face* that the imprisonment was "*for an act done, or omitted to be done, under a law of the United States.*"

To relieve against such an imprisonment required no trial by jury, for no facts could be in dispute. The whole case was resolved into a pure question of law, whether a State had the power to nullify an act of Congress. In view of these circumstances, and for the purpose of counteracting these proceedings of the State of South Carolina, the act of Congress of the 2d March, 1833, commonly called "*the Force Bill*," was passed. It directed the custom-houses to be kept in some secure place, either on land, or on board any vessel. It authorized the employment of the army and navy, and the militia of the United States, to protect and aid the custom-house

officers and others in the collection of the said duties. It gave the Circuit Courts of the United States jurisdiction of all suits against the United States officers, and others who aided them in the collection of the revenue, and authorized the removal of such suits from the State Courts into the United States Courts for trial. It authorized suits in the United States Courts for the recovery of damages for any injury done to them for the performance of their duties under the revenue laws. It declared all property seized for duties to be irrepleviable, and it punished by fine and imprisonment any person who should rescue, or attempt to rescue, any property taken to enforce the payment of the said duties. It provided for supplying by secondary evidence the records of the State Courts where the copies thereof could not otherwise be obtained; and where the public jails and private houses were not allowed to be used as places of imprisonment to enforce the payment of duties, it authorized the marshal to use other convenient places.

After these provisions, all of which were plainly intended to counteract and provide for the exigencies created by the act of nullification, the seventh section followed, giving to the United States Judges the powers in respect to writs of habeas corpus, which are now the subject of consideration in this case. It is impossible to look into the history of the country without seeing that this section was intended specially to remedy the evils caused by the nullification of South Carolina. It is equally impossible to read the enactments of that State, in relation to the revenue laws of the United States, and compare them with the provisions of the act of 2d March, 1833, without perceiving that the special object of the latter was to counteract the former, and that the general purpose and language of the act of Congress was confined to that object alone. It cannot, therefore, by any known rule in expounding statutes, be carried by construction to matters not within the letter nor spirit of the act, nor within the mischief to be remedied. It must be confined to cases where there is an *avowed purpose*, by some authority or law of a State, to disregard an act of Congress, and to imprison or otherwise punish the officers of the United States and their assistants, for enforcing it, and operates only in cases where this purpose

appears on the face of the proceedings. No authority was given to the United States judges to go behind the cause of detainer returned on the writ of habeas corpus, and to investigate and try questions of *fact* without the intervention of a jury, or to adjudge that the cause of detainer was *other than that which appeared on the face of the return.* No such extraordinary power was called for by the exigency of the case, and therefore, no such authority was given by the act. It was far otherwise in the celebrated case of Alexander McLeod. He was indicted for murder, committed within the jurisdiction of the State of New York, (25 Wend. 483.) The British government avowed the act complained of, and demanded his discharge. By the law of nations, the command of the sovereign is a justification for any act which the sovereign himself, according to the same law, has a right to commit. But it did not appear *upon the face of the proceedings* either that the act was authorized by the British government, or that the entry into a neutral territory, by an armed band of men, in the secresy of midnight, in a time of profound peace, and without any preliminary notice of hostility, or demand of redress for supposed injuries, and the destruction of property and assassination of citizens therein, was such an act as any government had a right to authorize, or could justify under the rules which now control the conduct of civilized nations.

As the federal authority is responsible to foreign governments for the proper decision of all such questions, it was deemed proper to give the federal courts jurisdiction over them; and therefore, in all cases where the subject of another nation is confined under authority of law for any act under the sanction of his sovereign, *the validity of which may depend upon the law of nations*, the act of Congress of 29th August, 1842, authorizes the United States judges to issue writs of *habeas corpus*, and, upon the return, to "hear the cause" and to receive proof of the justification relied upon. This power was deemed absolutely necessary, to enable the general government to meet its responsibilities to foreign nations, and to save the country from being involved in a war through the action of State authorities. But even in this extraordinary exigency, full provisions were made in the act for an appeal from the decision of the

judge on habeas corpus to the Supreme Court of the Unites States. But no such provisions are contained in the act of 1833. No authority is given to "hear the cause," nor to receive proofs apart from the cause of detainer returned. The difference between the two acts, and the diversity in the several occasions which produced them, plainly show that Congress intended that the powers granted by and the mode of action under them should also be different. In the one case the judges were confined to the cause of detainer returned, for the reason that this was all that was required to accomplish the object of the act. In the other, they were authorized to go behind the return, and to inquire into the facts and merits of the justification relied on; for nothing short of this would effectuate the manifest intention of the law, or meet the mischief designed to be remedied.

As no power is given by the act of 1833 to go behind the cause of detainer returned, the common law furnishes the rule for ascertaining the extent of the authority intended to be conferred by a grant of the right to issue writs of habeas corpus. "It seems to be agreed," says Hawkins, in his "Pleas of the Crown," "that no one can in any case controvert the truth of the return to a habeas corpus, or plead or suggest any matter repugnant to it;" 2 Hawkins, B. 2, ch. 15, s. 18; 2 Str. 851, ib. 1138; 1 Leach, 270; 4 Hayw. 165; 25 Wend. 569; 4 Dall. 413. There are, it is true, exceptions to this rule, under which a confession and avoidance has been allowed, and men who have been impressed into his Britannic Majesty's service, and were about to be carried into foreign parts, have been allowed to controvert the truth of the return, in order to prevent a total failure of the object of the writ. Fortunately for the security of our citizens, we have no such intolerable slavery here as that existing under the English law of impressment. There is, therefore, no occasion for an exception to the rule of law, in order to relieve any one who happens to be so fortunate as to be privileged from such an outrage. But Sir Michael Foster, in speaking of this rule and the exception to it, correctly declares that "exceptions do not destroy, but rather establish a general rule."

It is true, also, that statutes have been enacted in England, and

in the several States, giving to the Courts, in certain cases, the power to inquire into the facts and to controvert the truth of the return. These enactments serve to prove the rule of the common law. But there is a difference between controverting the *truth of the return* to a habeas corpus, and trying, or retrying, upon evidence, the merits of *the cause of detainer set forth in the return.* Even under the statute, it has been held that the latter cannot be done, "because it trenches on the office of the jury," 25 Wend. 569. But the *habeas corpus* acts of the several States can give no authority to the courts of the United States. If they did, it would be impossible to say which of the statutes of the several States must control; and it must be manifest that where the object of an act of Congress is to counteract the State laws, it would be altogether repugnant to the purpose of the act, and would tend to defeat its operation, to adopt the statutes of the refractory State as the rule of decision. In *Burr's trial,* Chief Justice Marshall, in speaking of writs of habeas corpus under the act of 1789, furnished the true construction of the act of 1833. He declared that the "principles and usages of law mean those general principles and usages which are to be found, *not in the legislative acts of any particular State,* but in that generally recognized and long established law which forms the substratum of the laws of every State." By this he means the Common Law. The act of Congress of 1833 must therefore be understood to confer upon the United States judges nothing more than the power to proceed on these writs, according to the rule of the common law. By that rule the judges had no right to controvert the truth of the return. But more especially were they prohibited from trying, without a jury, and without the means of reviewing their decision, the *facts* and *merits* of the cause of detainer set forth in the return.

But by the true construction of the act of 1833, it is confined to cases of imprisonment *for executing the revenue laws.* And even in those cases, it was not intended to discharge, without security for their appearance, persons who were arrested on mesne process, for the purpose of compelling them to give bail to an action. This is fairly to be inferred from the general provisions of the act. In

suits in the State courts for anything done under the revenue laws, ample provision is made in the act for the removal of those causes into the United States Courts for trial therein, *according to the course of the common law*, with a right of review in the tribunal of the last resort; and in the meantime, so far from discharging the persons in custody in such actions, without bail, the marshal is expressly directed by the act to *take the bodies of the defendants into his custody*, to be dealt with, *in the said cause, according to the rules of law*, and the order of the Circuit Court, or any judge thereof in vacation. And "all attachments made, and all bail and other security given upon such suits," are expressly directed to "continue in like force and effect as if the said suits had proceeded to final judgment and execution in the State court." There is no injustice in permitting the habeas corpus action to operate in cases of this kind, where ample provision is made to secure the prisoners in custody until bail is entered, and to hold the bail until the final decision is made. It deprives the parties of no rights. It merely changes the forum. But there is no provision for the removal of *other actions*, or for securing a trial therein, or for an appeal, or for holding the prisoners until bail be entered, or for continuing the liability of the bail until the final decision, so that if this section be construed to authorize the discharge of prisoners arrested for *other causes*, in the State courts, it operates as a complete denial of justice. It virtually arrests the proceedings in the State courts without providing a remedy elsewhere. It violates the great constitutional injunction that "every man for an injury done him shall have remedy by due course of law." It constitutes a subordinate judge the exclusive arbiter of questions of *fact* and *law*, contrary to the fundamental principle of the trial by jury: "Ad questiones facti non respondent judices; ad questiones legis non respondent juratores." It is impossible to believe that the national legislature intended any such violation of private rights, or disregard of fundamental principles. The whole history of the act in question, and all its provisions, are at variance with any such construction.

If a prisoner may be discharged from *mesne* process in this way, he may also be relieved from *final* process, by the same means.

The act of Congress is as operative in the last case as in the first. Indeed, it was manifestly intended to relieve against the final judgments in a State which punished public officers for performing their duties, and allowed of no appeal from its decisions. Without giving the act in operation upon imprisonment under final judgments of State Courts, it would fail of its great object, which was to relieve against open acts of nullification by State authority. If the act be extended to cases where no such intention appears, and be applied, as it must be, to final process, let us look at its operation. The plaintiff brings his action for an injury *not authorized by any law whatever.* The defendant alleges that the act *was authorized by a law of the United States.* The Constitution of the State declares that "the trial by jury shall be as heretofore, and the right thereof remain inviolate." The Constitution of the United States is equally emphatic in the provision that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law." The sum in controversy exceeds twenty dollars—the suit is a suit at common law. The parties accordingly go to trial before a jury, and the decision is solemnly pronounced, according to the rules of the common law, that the defendant *had no authority, under the act of Congress, to do the injury complained of.* The Constitution of the United States and the act of Congress of 1789, give the parties the right to review this decision in the Supreme Court of the United States by writ of error, where, if it be erroneous, the judgment would be reversed, and the cause sent back for a new trial before another jury. But according to the construction of the act of 1833, as now claimed in this case, all these proceedings are nugatory and void! A single judge of the District Court of the United States may, it is alleged, re-examine the merits—disregard the verdict and judgment—and, without a trial by jury, or right of appeal, may discharge the defendant from imprisonment under the execution. If this may be done, what becomes of the inestimable right of trial by jury? Of what avail is the solemn guaranty of that right contained in the

State Constitution? Of what force is even the express provision in its favor, as set forth in the Constitution of the United States? Of what consequence are the laws of the several States? Of what value is the process, or even the most solemn judgment of any State Court in the Union? Are all the independent States of this great confederacy to be trodden in the dust, at the foot of a single subordinate judge? The Congress of the United States is patriotic and enlightened, but its members are the free representatives of independent States. The national army and navy are irresistible in war, but its soldiers and sailors are the true-hearted citizens and sons of the several States. The Union is great and glorious indeed, but it is the creature of the States, and the stars that glitter on its banner represent the proud and powerful sovereignties from which it derives its existence, its support, and its lustre. When these are extinguished, the Union itself will be lost in the gloom of anarchy or despotism. This truth was beautifully expressed by the Chief Magistrate of the Union, when he declared it to be a duty of high obligation "to preserve sacred from all touch of usurpation, as the very palladium of our political salvation, the reserved rights of the States and the people."

The act of 1833 has been in existence more than twenty years. It was passed, as we have seen, for the special purpose of granting relief to the United States officers and their assistants, where a State undertook to imprison them *for executing the revenue laws of the United States*, and it was intended to apply only to cases in which that purpose was *openly avowed, and was set forth on the face of the cause of detainer itself.* From the day of its enactment to the time of making the recent orders of the Circuit Court, in the matters connected with the plaintiff's case, it has never been supposed to apply to any other purpose. No case has been produced to furnish a precedent for the action of the Circuit Court; and, so far as our knowledge extends, no such authority exists. If the act admitted of such extensive operation as that contended for in this case, there must have been very many opportunities for so applying it. In a government of such vast extent, and with officers so numerous, and engaged in such a variety of duties, it is not likely

that they have been more fortunate or circumspect than other citizens, in avoiding personal liability for violating the rights of others. They must, in the nature of things, have been as frequently called to account for their actions as other officers. If it had been supposed for a moment that they were above the law, and that they were not bound, like other citizens, to submit their pleas of justification to "the judgment of their peers," the Courts of the United States would have been flooded with applications for these convenient privileges. Those tribunals, like cities of refuge, would have been crowded with fugitives from the justice of every State in the Union.

The *habeas corpus*, in this case, was issued under the seal of the *Circuit* Court of the United States. It commanded the sheriff to bring the prisoners before "*one of the judges*" *of that Court.* The sheriff made his return "*to the judges*" *of that Court*, and the order for the discharge of the prisoners was made *by that Court, as a Court*, and not by a single "justice," or "judge." The authority to issue writs of *habeas corpus*, in the cases provided by that statute, is distinctly confined to "either of the justices of the *Supreme Court*, or a judge of any *District* Court." It is needless to say that a special authority like this must be strictly pursued, and that no "justice of the *Supreme* Court," nor "judge of the *District* Court," has any right to avoid or divide the solemn responsibility of the high and perilous trust reposed in him by the act. If he acts at all, it must be his *sole* and *separate* act, either as a "justice of the *Supreme* Court" or as a "judge of the *District* Court." He cannot fold himself up in the imposing mantle of the *Circuit Court;* for that Court, as a Court, has no jurisdiction whatever under the section supposed to sanction this order of discharge. It was manifestly intended, by the act of Congress, that when the rights of the States or the parties, are thus intefered with, they should know who directed it, and in what capacity he acted.

The United States stands in no need of means to enforce her laws. Her Supreme Court claims and exercises jurisdiction by writ of error over the judgments of the Courts of the last resort in the several States, *in all cases where a right has been claimed*

under the laws of the Union, and that right has been denied. Their jurisdiction is claimed and exercised in civil as well as criminal cases; so that there was no necessity whatever for a resort to the indignity of obstructing State process, and contemning State authority, in the manner attempted in this case. It is impossible to believe that the representatives of free States ever intended to authorize any such unnecessary infringement of the reserved rights of the States and the people. Neither the words of the section relied on, nor the general provisions of the act, nor the occasion which called it into existence, nor the general rules of the common law by which it must be expounded, nor any usage under it, nor any other circumstances of propriety or necessity, indicate any such intention. We are, therefore, of opinion, that the Circuit Court of the United States had no jurisdiction whatever over the parties in this cause, and had no authority to interfere with the execution of the process of this Court. When a Court of limited jurisdiction, instituted by a government of enumerated powers, transcends its authority, its order is no justification to the officer who obeys it. In this case the sheriff ought not to have obeyed the order for the discharge of the prisoners.

In giving this opinion, there is not the slightest feeling of disrespect for the learning and integrity of the judges of the Circuit Court. On the contrary, we can appreciate the feeling and excuse the errors of a judgment likely to be excited by the disorderly movements of a class of individuals, who, setting up their own judgments as a "higher law" than the Constitution, are constantly endeavoring to defeat the operation of certain laws of the United States. But these considerations do not absolve us from the discharge of our official obligations. We might have stepped out of our way to avoid this question for the present. But it lies directly in our path, and it must be met in this cause, should the plaintiff proceed by action against the Sheriff, or recover in this suit. To avoid it would be to countenance encroachment, and would leave the Sheriff, and other officers charged with the execution of the laws of the State, in doubts in regard to their official duties. It is better that our opinion should be made known at once, in order that

the State officers may know their duty, on the one side, while on the other, those who may feel themselves authorized to obstruct hereafter the regular and valid process of this Court, without authority, may act with a proper consideration of their responsibilities.

It does not, however, necessarily follow from these views, that we are bound to commit the sheriff for a contempt of this Court. This remedy is under the discretion of this Court, and is the appropriate one where there is a *corrupt* or *wilful* disobedience of the commands of the writ; but "where there is neither *corruption*, nor any particular *obstinacy* in relation to the service of such writ, nor other extraordinary circumstances of *wilful negligence*, the judgment whereof is left to the discretion of the Court, it is not usual to grant an attachment; but the party is left to his ordinary remedy by action against the officer, or by taking out an *alias* and *pluries* which, if the sheriff do not execute, an attachment goes against him," of course, unless he give a good excuse for his conduct. 2 Hawk, P. C. b. 2, ch. 22, s. 2. If the plaintiff has not moved for an attachment in a reasonable time, it will not be granted. The party will in that case be left to his ordinary remedy by action or otherwise. *Rex* vs. *Pering*, 3 B. & P. 151; *Rex* vs. *Sheriff of Surry*, 9 East, 467; Watson on Sheriffs, 122. In this case there is not the slightest evidence of *wilful* misconduct on the part of the sheriff. It was natural that that excellent officer should respect the authority of the Circuit Court. The order for the discharge of the prisoners came to him in the imposing form of a judicial act, and when all the circumstances are considered, it is not surprising that he obeyed it. It does not appear that the plaintiff gave any notice that he would contest its validity, or would hold the sheriff liable if he regarded it. On the contrary, the plaintiff silently acquiesced in the discharge from the 14th of February to the 14th November, 1854, a period of nine months. Under these circumstances it would be unjust to the sheriff to award an attachment. The defendants may be considered as discharged on common bail, and the plaintiff may proceed in his action. Should he recover, the powers of this Court to enforce the execution of the judgment

will be called into action. But the present rule must be discharged.

Mr. Justice Knox, who was present at the argument, fully concurs in this opinion.

Rule discharged.

NOTE.—The following is the opinion delivered by his Honor Judge Kane, on the discharge of the defendants in this case, as reported in 2 Wallace, jr. 533:

KANE, J.—The seventh section of the Act of Congress, of March 2d, 1833, chapter 57, under which the action of the court in the present instance is to be regulated, enacts, "That either of the Justices of the Supreme Court, or a Judge of the District Court, shall have power to grant writs of habeas corpus in all cases of prisoners in confinement, where they shall be confined by any authority of law for any act done in pursuance of a law of the United States, or any process of a judge or court thereof."

I will not weaken by a repetition, that clear and conclusive exposition of this section, given by Judge Grier, when this case was before us on the arrest, at the suit of the Commonwealth, for the assault and battery with intent to kill. But to say that we may issue a habeas corpus to rescue an officer from imprisonment for doing his duty, and yet that we shall shut our eyes to the proofs that he did it—to affirm that a court, called on to inquire whether an imprisonment is tortious, must listen to no evidence but that of the tort feasor himself and that of his accomplices—to protest that wrong is to be done by truth pertinent to the issue—is to invert the first principles of common sense as well as justice.

What is that issue? Is it whether the learned Judge of the Supreme Court of Pennsylvania had authority to issue this writ: or whether this writ itself is formal? No one has contested either of these positions. Is it whether he has exercised his functions properly? It is no part of my functions to revise his adjudications; he has his own sphere, and I do not share its responsibilities. He was called upon to sanction the arrest of trespassers. Affidavits which he regarded as sufficient, were laid before him, and he granted the arrest. I am called upon to relieve an officer of the United States from a false and tortious imprisonment. He had to decide, I suppose, whether the party who complained before him had a right to the process he sought; he has decided that question. I have to inquire whether under any supposed cover of that process, the laws of the United States have been violated in the imprisonment of their officers, and this question I am going to decide.

And how do the learned counsel ask me to prepare for my decision? Because the judge of a State Court, in a proceeding necessarily *ex parte*, may have been imposed on by misstatements or suppressions of fact, am I therefore constrained in another cause, under another law, within a different constitutional jurisdiction, to make my hearing *ex parte* also; to hearken only to him, who has abused, it is said,

the process of the law by falsehood or fraud, and refuse my ear to him whom the law specially enjoins me to relieve, if he has been wronged?

What is to be the consequence? A man swears to an assault and battery; the entire truth told, he was arrested for robbing the mint or the mail. Another swears to a trespass in breaking his close and carrying away his goods; the goods were stolen, and have been recovered under a search warrant. Both affidavits are the truth, unless that means the whole truth; they make out the *prima facie* case of the plaintiff. What then? Is the officer to go to prison in default of bail, and to stay there because the rogue swore to only half the story? Or would the argument change if the plaintiff should substitute another man's oath for his own, keeping himself aloof the while, not caring to proclaim his whereabouts?

But this is not to meet the question before me in all its breadth. He who has read the Act of Congress, of March 2d, 1833, or who remembers the times to meet which it was passed, knows perfectly well that it looked to the contingency of a collision been the general and the state authorities. There were statesmen then, who imagined it possible that a statute of the United States might be so obnoxious in a particular region, or to a particular state, as that the local functionaries would refuse to obey it, and would interfere with the officers who were charged to give it force, even by arresting and imprisoning them. In direct antecedence, therefore, to the section under consideration, they framed two other sections of the same statute, one authorizing the military forces of the United States, to be employed in aid of the judicial power, the other authorizing a resort to especial jails for the safe keeping of United States prisoners. It was necessary to go one step further. The military power might enforce the execution of the laws, when the marshal had failed and been made a prisoner himself for attempting to execute them; the prisons specially constituted might detain those whom the military had arrested; but the officer of the law, arrested in the discharge of his duty, imprisoned for the offence of attempting to discharge it, perhaps at the suit of the resisting state, more probably at the instance of some private grief, what was to become of him?

This seventh section meets the case, and gives the remedy. Is it credible that wise men, framing a statute for such an emergency, meant to deny to their judges to hear the wrong before they adjudicated the redress; or to draw upon the consciences of the men who had instigated the outrage on the officers, and to accept the recorded formalities, by which the outrage had been consummated, as the only reliable and legal means for ascertaining facts and legitimate deductions from them?

It is not to be questioned, that there have been men in some quarters of the country, whose efforts, if successful, would have made this section as applicable in spirit, as it is in terms, to cases under the fugitive slave law; and I do not see the circumstances which at the present moment should make its reasonable construction, and the proper mode of giving it effect, different.

The whole course of the argument goes to show, that the section applies alike to all cases in which an officer is imprisoned, because of acts done in pursuance of the United States laws. It is altogether *a fortiori* that the relief must extend to cases of arrest under civil process. The suit of an individual has no claims to superior

dignity or consideration over a prosecution instituted by the State; nor is it generally as well considered, or as rightful.

I pass over the argument, which supposes that I am about to try this cause between the parties to the exclusion of the jury. It is simply founded in mistake. I can neither acquit or convict. Nor can my action arrest the proceedings in the State Court, nor have any effect on the trial there. The Act of Congress, which gives to revenue officers the right to bring themselves for trial into the Circuit Court, when their official conduct is in question, does not extend to the officers of the law.

If, therefore, there was such a case made out *ex parte* by Thomas, and such as, *prima facie* and on his affidavits, showed an abuse of authority by the officers, I should hear the evidence which they wished to offer to repel it. But it is not necessary for me to do this, for there is in truth nothing in them which sufficiently connects any of the United States officers with the acts of violence of which Thomas complains.

There is nothing in them to show by whom he was wounded, nor in what manner, nor under what provocation, nor with what attending circumstances, nor who pursued, or menaced, or cried "shoot him," or fired or presented pistols. The relators are in nowise connected with any of these incidents, except that two of them are doubtingly and imperfectly referred to as having witnessed the scene near the river bank, and a third as having, a little while after the affair was over, given his name to a gentleman who inquired for it. As to Keith, the fourth named defendant in the writ of *capias*, he is neither named, nor described, nor alluded to.

And beyond this there is nothing before me. The plaintiff himself who could have sworn clearly and affirmatively to all the merits of his case, had made no affidavit. He could have told us how it came to pass that he was wounded, and whether he was the aggrieved or the aggressor in the affray. If he was not in fact the fugitive named in the warrant, and resolutely periled his own life by assailing the lives of those who were charged to apprehend him—or if they transcended their authority, and he was beaten without cause; his affidavit might have possessed us of it all, without a recourse to inference or rumor. He too could have identified the parties that beat, or shot, or menaced him.

What others have sworn to, not only fails to implicate the relators in any act of violence whatever, but it leaves it absolutely to be guessed at, whether the plaintiff has been wronged at all. I cannot but wish that his personal affidavit had been found with the rest. He is absent; but he has constituted and instructed counsel, and I am justified in assuming that they have not failed to apprise him that his own statement, under oath, was the usual, and might be, perhaps, the indispensable condition of success in his application to imprison the relators.

I have already had occasion to observe, that in a case arising under this statute, I cannot feel myself restricted by the practice that governs applications for bailable process. But I think it safe to avail myself of the light which that practice reflects

"No plaintiff," says Judge Sergeant, in the case of *Nevins* v. *Merrie*, 2 Wharton 500, "can be considered entitled to demand bail for a cause of action which he can

neither positively swear to, nor allege sufficient facts and circumstances in the affidavit to satisfy the judge of its existence." Equally safe, it seems to me, would be the rule, that an officer of this court should not be detained in prison for an alleged abuse of his powers, without either a positive oath of merits from the plaintiff, or a sworn detail of circumstances to supply its place.

Relators discharged.

In the District Court of the United States for the Wisconsin District, November Term, 1854.

CHARLES A. AVERY AND MOSES K. MOODY *vs.* EDGAR P. DOANE.

1. A married woman living with her husband, having carried on business of trade in her own name, and purchased goods upon credit, and also having a running account for goods purchased of her husband, cannot be proceeded against as garnishee in an attachment against her husband.
2. The act of Wisconsin to provide for the protection of married women in the enjoyment of their own property, does not enable a married woman, while living with her husband, to carry on trade to the exclusion of him or his creditors, or to become his debtor in the business of the trade.

The opinion of the Court was delivered by

MILLER, J.—This proceeding was commenced by writ of attachment, which was served on Sarah A. Doane, as garnishee. Her answer was taken before a commissioner of this court; wherein she states, that she is the wife of the defendant, Edgar P. Doane, and has been for eighteen years, and that she resides with her husband, at Green Bay; where she is, and has been engaged in the dry goods, millinery and fancy goods business, for four years. That she carries on the business, and buys goods in New York and Chicago, in her own name, principally on credit. She also bought goods on credit out of her husband's store, before he sold out and stopped business. She had a running account with her husband. When she commenced business at Green Bay, her father purchased part of the goods, amounting to four or five hundred dollars; and gave her some money as a present. Her business has always been in her